No. 147.

OFFICE SUPREME COURT of U. S.
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PETITION FOR REHEARING.

Petition for Rehearing.

Supreme Court of the United States.

OCTOBER TERM, 1900.

Rec'd May 15, 1902.

NO. ~~402~~ 147

GEORGE F. EMBLEN, APPELLANT,

VS.

THE LINCOLN LAND COMPANY ET AL., APPELLEES.

Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

T. J. MAHONEY AND E. R. DUFFIE,

FOR APPELLANT.

(17,888.)

PETITION FOR REHEARING.

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 403.

GEORGE F. EMBLEN, *Appellant*,
vs.
THE LINCOLN LAND COMPANY ET AL., *Appellees*.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

T. J. MAHONEY AND E. R. DUFFIE, *for Appellant*.

The appellant in the above entitled cause respectfully petitions for a rehearing of said cause, for the reason that in the opinion announced by the Court affirming the judgment of the Circuit Court and the judgment of the Circuit Court of Appeals, this Court has overlooked and failed to pass on the contention of appellant in respect to his equitable rights as distinguished from vested legal rights.

By the terms of the opinion handed down by your honors you have decided that until the contest should end in the Land Department, favorably to the contestant, he had no vested rights. In so far as the term "vested rights" applies to or is intended to mean fixed legal rights, enforceable by proceedings at law, as, for instance, a proceeding for a writ of mandamus against the officials of the Land

Department, the appellant concedes, as he has always conceded, that in that sense he had not acquired a vested right. But his contention has always been, and was so presented in his brief filed in this case in this Court, that although he may not have acquired a vested right in the sense of a legal right enforceable at law, yet he had gone so far in the acceptance of the offer made by the government, and in the payment of the consideration required by the government, as to give him at least an inchoate equitable right for the protection of which he was entitled to the aid of a court of equity. Your honors have also overlooked the circumstance that by the Act of 1892 it is provided that if a contestant should die pending the contest, his heirs should inherit a right to continue the contest, and if successful, avail themselves of the preference right to enter the land. This statute clearly contemplates that pending the contest, the contestant has acquired some rights. Those rights may not be vested in the sense of being legal and enforceable in an action at law, but the fact that they are made to descend to his heirs certainly shows that Congress contemplated that they were rights of some substance, and if they are of any substance, they are entitled to the protection of a court of equity.

The appellant most respectfully petitions your honors to re-examine that portion of appellant's brief, in which he invites your attention to the distinction between legal and equitable rights and legal and equitable remedies; and respectfully submits that upon an examination of that kind the Court ought to conclude that appellant had acquired such inchoate equitable rights as a court of equity ought to protect, and that having acquired such rights, it is the duty of a court of equity to compel an accounting to the appellant, by all parties who took with notice of his rights.

Respectfully submitted,

E. R. DUFFIE

AND T. J. MAHONEY,

For Appellant.